

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Amen Dhyllon

v.

Alex Michael Azar, II in his official capacity
as the Secretary of Health and Human
Services

No. 20-4593

Civil Action

MEMORANDUM OF LAW

This action challenges the Secretary of Health and Human Services’ refusal to remove a report submitted to the National Practitioner Data Bank (“NPDB”) from the NPDB’s data bank. There was an administrative proceeding to consider removal. That proceeding generated a variety of records, which are the basis for this action. Plaintiff Amen Dhyllon (“Dr. Dhyllon”) seeks to file the administrative record so that this Court may consider it. However, under the applicable regulations, the administrative record appears to be confidential. Accordingly, Plaintiff Amen Dhyllon asks to file the administrative record under seal.

Under 45 C.F.R. § 60.20, “[i]nformation reported to the NPDB is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in §§ 60.17, 60.18, and 60.21 of this part.” 45 C.F.R. § 60.20(a). None of the exceptions applies here. Section 60.17 deals with hospitals’ requests for information in the NPDB’s data bank. Section 60.18 provides a list of people who may request information from NPDB’s data bank, which does not provide any exception for civil lawsuits challenging the refusal to remove a report to NPDB. Section 60.21 deals with administrative proceedings challenging a report, but not subsequent court proceedings.

In short, none of the exceptions deal with civil actions challenging the Secretary’s refusal to remove a report from the data bank. Indeed, many of the documents included in the administrative

record assert on their face that they are privileged. Accordingly, Plaintiff Amen Dhyllon (“Dr. Dhyllon”) believes that he has no choice other than to ask to file the records under seal. Further, violation of the confidentiality provision is subject to fine of up to \$11,000. 45 C.F.R. § 60.20(b).

Dr. Dhyllon and the undersigned do not wish to violate the regulation or to incur the risk of substantial fine. Accordingly, they ask this Court to permit Dr. Dhyllon to file the administrative record under seal.

Respectfully submitted,

/s/ Daniel J. Auerbach

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